

1 HOUSE BILL NO. 454

2 INTRODUCED BY T. MCGILLVRAY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS RELATED TO CONTRIBUTIONS
5 MADE TO A QUALIFIED TUITION PROGRAM; ALLOWING A PERSON TO CONTRIBUTE TO A QUALIFIED
6 TUITION PROGRAM THROUGH AN OUT-OF-STATE FINANCIAL INSTITUTION; ESTABLISHING REPORTING
7 REQUIREMENTS FOR AN OUT-OF-STATE FINANCIAL INSTITUTION; PROVIDING THAT CONTRIBUTIONS
8 MADE TO A QUALIFIED TUITION PROGRAM IN ANOTHER STATE AND CONTRIBUTIONS AND EARNINGS
9 WITHDRAWN FROM A QUALIFIED TUITION PROGRAM IN ANOTHER STATE ARE EXCLUDED FROM
10 MONTANA ADJUSTED GROSS INCOME; PROVIDING THAT NONQUALIFIED WITHDRAWALS OF AMOUNTS
11 IN A QUALIFIED TUITION PROGRAM IN ANOTHER STATE ARE SUBJECT TO THE RECAPTURE TAX;
12 AMENDING SECTIONS 15-30-111, 15-62-103, 15-62-201, 15-62-207, AND 15-62-208, MCA; AND PROVIDING
13 AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 15-30-111, MCA, is amended to read:
18 **"15-30-111. Adjusted gross income.** (1) Adjusted gross income is the taxpayer's federal adjusted gross
19 income as defined in section 62 of the Internal Revenue Code, 26 U.S.C. 62, and in addition includes the
20 following:
21 (a) (i) interest received on obligations of another state or territory or county, municipality, district, or other
22 political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana
23 under federal law;
24 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
25 852(b)(5), that are attributable to the interest referred to in subsection (1)(a)(i);
26 (b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a
27 reduction of Montana income tax liability;
28 (c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue
29 Code that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;
30 (d) depreciation or amortization taken on a title plant as defined in 33-25-105;

1 (e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the
2 amount recovered reduced the taxpayer's Montana income tax in the year deducted;

3 (f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of
4 the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution
5 of the same estate or trust for the same tax period; and

6 (g) except for exempt-interest dividends described in subsection (2)(a)(ii), for tax years commencing after
7 December 31, 2002, the amount of any dividend to the extent that the dividend is not included in federal adjusted
8 gross income.

9 (2) Notwithstanding the provisions of the Internal Revenue Code, adjusted gross income does not
10 include the following, which are exempt from taxation under this chapter:

11 (a) (i) all interest income from obligations of the United States government, the state of Montana, or a
12 county, municipality, district, or other political subdivision of the state and any other interest income that is exempt
13 from taxation by Montana under federal law;

14 (ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code, 26 U.S.C.
15 852(b)(5), that are attributable to the interest referred to in subsection (2)(a)(i);

16 (b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including
17 \$800 for a taxpayer filing a separate return and \$1,600 for each joint return;

18 (c) (i) except as provided in subsection (2)(c)(ii), the first \$3,600 of all pension and annuity income
19 received as defined in 15-30-101;

20 (ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

21 (A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total
22 amount of the exclusion provided in subsection (2)(c)(i) by \$2 for every \$1 of federal adjusted gross income in
23 excess of \$30,000 as shown on the taxpayer's return;

24 (B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity
25 income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in
26 subsection (2)(c)(i) must be reduced by \$2 for every \$1 of federal adjusted gross income in excess of \$30,000
27 as shown on their joint return;

28 (d) all Montana income tax refunds or tax refund credits;

29 (e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

30 (f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section

1 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January
2 1, 1983, received by ~~persons~~ a person for rendering services ~~rendered by them~~ to patrons of premises licensed
3 to provide food, beverage, or lodging;

4 (g) all benefits received under the workers' compensation laws;

5 (h) all health insurance premiums paid by an employer for an employee if attributed as income to the
6 employee under federal law;

7 (i) all money received because of a settlement agreement or judgment in a lawsuit brought against a
8 manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

9 (j) principal and income in a medical care savings account established in accordance with 15-61-201
10 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a
11 dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

12 (k) principal and income in a first-time home buyer savings account established in accordance with
13 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase
14 of a single-family residence;

15 (l) contributions withdrawn from a family education savings account or from any qualified tuition program
16 allowed under section 529 of the Internal Revenue Code, 26 U.S.C. 529, in another state or earnings withdrawn
17 from a family education savings account or from a qualified tuition program in another state for qualified higher
18 education expenses, as defined in 15-62-103, of a designated beneficiary;

19 (m) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the
20 recovered amount did not reduce the taxpayer's Montana income tax in the year deducted;

21 (n) if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of
22 the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution
23 of the same estate or trust for the same tax period;

24 (o) deposits, not exceeding the amount set forth in 15-30-603, deposited in a Montana farm and ranch
25 risk management account, as provided in 15-30-601 through 15-30-605, in any tax year for which a deduction
26 is not provided for federal income tax purposes;

27 (p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant
28 to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and
29 taxpayer meet the filing requirements in 15-30-142.

30 (q) principal and income deposited in a health care expense trust account, as defined in 2-18-1303, or

1 withdrawn from the account for payment of qualified health care expenses as defined in 2-18-1303; and

2 (r) that part of the refundable credit provided in 33-22-2006 that reduces Montana tax below zero.

3 (3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall
4 include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as
5 provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election
6 is effective.

7 (4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business
8 deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and
9 51(a) of the Internal Revenue Code, 26 U.S.C. 38 and 51(a), is allowed to deduct the amount of the wages and
10 salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries
11 were used to compute the credit. In the case of a partnership or small business corporation, the deduction must
12 be made to determine the amount of income or loss of the partnership or small business corporation.

13 (5) Married taxpayers filing a joint federal return who are required to include part of their social security
14 benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal
15 base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement
16 benefits when they file separate Montana income tax returns. The federal base must be split equally on the
17 Montana return.

18 (6) A taxpayer receiving retirement disability benefits who has not attained 65 years of age by the end
19 of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income
20 up to \$100 a week received as wages or payments in lieu of wages for a period during which the employee is
21 absent from work due to the disability. If the adjusted gross income before this exclusion exceeds \$15,000, the
22 excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the
23 taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the
24 limitation for income exceeding \$15,000 is determined with respect to the spouses on their combined adjusted
25 gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage
26 in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting
27 or expected to last at least 12 months.

28 ~~(7) Married taxpayers who file a joint federal return and who make an election on the federal return to~~
29 ~~defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA,~~
30 ~~pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana~~

1 income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same
 2 time period. The deferred amount must be attributed to the taxpayer making the conversion:

3 ~~(9)(7)~~ An individual who contributes to one or more accounts established under the Montana family
 4 education savings program or to one or more accounts under a qualified tuition program allowed under section
 5 529 of the Internal Revenue Code, 26 U.S.C. 529, in any other state may reduce adjusted gross income by the
 6 lesser of \$3,000 or the amount of the contribution. In the case of married taxpayers, each spouse is entitled to
 7 a reduction, not in excess of \$3,000, for the spouses' contributions to the accounts. Spouses may jointly elect to
 8 treat half of the total contributions made by the spouses as being made by each spouse. The reduction in
 9 adjusted gross income under this subsection applies only with respect to contributions to an account of which the
 10 account owner, as defined in 15-62-103, or the owner of an account under a qualified tuition program in any other
 11 state is the taxpayer, the taxpayer's spouse, or the taxpayer's child or stepchild if the taxpayer's child or stepchild
 12 is a Montana resident. The provisions of subsection (1)(e) do not apply with respect to withdrawals of
 13 contributions that reduced adjusted gross income.

14 ~~(9)(8)~~ (a) A taxpayer may exclude the amount of the loan payment received pursuant to subsection
 15 ~~(9)(a)(iv)~~ (8)(a)(iv), not to exceed \$5,000, from the taxpayer's adjusted gross income if the taxpayer:

16 (i) is a health care professional licensed in Montana as provided in Title 37;
 17 (ii) is serving a significant portion of a designated geographic area, special population, or facility
 18 population in a federally designated health professional shortage area, a medically underserved area or
 19 population, or a federal nursing shortage county as determined by the secretary of health and human services
 20 or by the governor;

21 (iii) has had a student loan incurred as a result of health-related education; and

22 (iv) has received a loan payment during the tax year made on the taxpayer's behalf by a loan repayment
 23 program described in subsection ~~(9)(b)~~ (8)(b) as an incentive to practice in Montana.

24 (b) For the purposes of subsection ~~(9)(a)~~ (8)(a), a loan repayment program includes a federal, state, or
 25 qualified private program. A qualified private loan repayment program includes a licensed health care facility, as
 26 defined in 50-5-101, that makes student loan payments on behalf of the person who is employed by the facility
 27 as a licensed health care professional. (Subsection (2)(f) terminates on occurrence of contingency--sec. 3, Ch.
 28 634, L. 1983; subsection (2)(o) terminates on occurrence of contingency--sec. 9, Ch. 262, L. 2001.)"

29

30 **Section 2.** Section 15-62-103, MCA, is amended to read:

1 **"15-62-103. Definitions.** As used in this chapter, the following definitions apply:

2 (1) "Account" means an individual participating trust account established under this chapter.

3 (2) "Account owner" means the person who enters into a participating trust agreement and who is
4 designated at the time that an account is opened as having the right to withdraw money from the account before
5 the account is disbursed to or for the benefit of the designated beneficiary.

6 (3) "Board" means the board of regents of higher education established by Article X, section 9,
7 subsection (2), of the Montana constitution and 2-15-1505.

8 (4) "Committee" means the family education savings program oversight committee established in
9 20-25-901.

10 (5) "Designated beneficiary" means, with respect to an account, the person designated at the time that
11 the account is opened as the person whose higher education expenses are expected to be paid from the account
12 or if this person is replaced in accordance with 15-62-202, the individual replacing the former designated
13 beneficiary.

14 (6) "Financial institution" means any bank, commercial bank, national bank, savings bank, savings and
15 loan association, credit union, insurance company, trust company, investment adviser, or other similar entity that
16 is authorized to do business in this state.

17 (7) "Higher education institution" means an eligible educational institution as defined in section 529(e)(5)
18 of the Internal Revenue Code, 26 U.S.C. 529(e)(5).

19 (8) "Investment products" means, without limitation, certificates of deposit, savings accounts paying fixed
20 or variable interest, financial instruments, one or more mutual funds, and a mix of mutual funds.

21 (9) "Member of the family" means, with respect to a designated beneficiary, a member of the family of
22 the designated beneficiary as defined in section 529(e)(2) of the Internal Revenue Code, 26 U.S.C. 529(e)(2).

23 (10) "Nonqualified withdrawal" means a withdrawal from an account that is not:

24 (a) a qualified withdrawal;

25 (b) a withdrawal made as the result of the death or disability of the designated beneficiary of an account;

26 (c) a withdrawal that is made on the account of a scholarship or the allowance or payment described in
27 section 135(d)(1)(B) or (d)(1)(C) of the Internal Revenue Code, 26 U.S.C. 135(d)(1)(B) or (d)(1)(C), and that is
28 received by the designated beneficiary; or

29 (d) a rollover or change of designated beneficiary described in 15-62-202.

30 (11) "Out-of-state financial institution" means any bank, commercial bank, national bank, savings bank,

1 savings and loan association, credit union, insurance company, trust company, investment adviser, or other
 2 similar entity that is authorized to do business in this state and another state for the purposes of establishing an
 3 account for a person in a qualified tuition program allowed under section 529 of the Internal Revenue Code, 26
 4 U.S.C. 529, in another state.

5 ~~(11)~~(12) "Participating trust agreement" means an agreement between the board, as trustee and as
 6 administrator of the program, and the account owner that creates a trust interest in the trust and provides for
 7 participation in the program.

8 ~~(12)~~(13) "Program" means the family education savings program established pursuant to 15-62-201. The
 9 program must be structured to permit the long-term accumulation of savings that can be used to finance all or
 10 a share of the costs of higher education.

11 ~~(13)~~(14) "Qualified higher education expenses" means qualified higher education expenses as defined
 12 in section 529(e)(3) of the Internal Revenue Code, 26 U.S.C. 529(e)(3).

13 ~~(14)~~(15) "Qualified withdrawal" means a withdrawal from an account to pay the qualified higher education
 14 expenses of the designated beneficiary of the account.

15 ~~(15)~~(16) "Trust" means the family education savings trust established by 15-62-301.

16 ~~(16)~~(17) "Trustee" means the board in its capacity as trustee of the trust.

17 ~~(17)~~(18) "Trust interest" means an account owner's interest in the trust created by a participating trust
 18 agreement and held for the benefit of a designated beneficiary."

19

20 **Section 3.** Section 15-62-201, MCA, is amended to read:

21 **"15-62-201. Program requirements -- application -- establishment of account -- qualified and**
 22 **nonqualified withdrawal -- penalties.** (1) The program must be operated through use of accounts in the trust
 23 established by account owners. Payments to the trust for participation in the program must be made by account
 24 owners pursuant to participating trust agreements. A person who wishes to participate in the program and open
 25 an account into which funds will be deposited to pay the qualified higher education expenses of a designated
 26 beneficiary shall:

27 (a) enter into a participating trust agreement pursuant to which an account will be established as a
 28 participating trust of the trust;

29 (b) complete an application on the form prescribed by the board that includes:

30 (i) the name, address, and social security number or employer identification number of the contributor;

- 1 (ii) the name, address, and social security number of the account owner if the account owner is not the
2 contributor;
- 3 (iii) the name, address, and social security number of the designated beneficiary;
- 4 (iv) the certification relating to no excess contributions adopted by the board pursuant to 20-25-902;
- 5 (v) the designation of the financial institution with which the funds in the participating trust will be
6 invested; and
- 7 (vi) any other information required by the board;
- 8 (c) pay the one-time application fee established by the board;
- 9 (d) make the minimum contribution required by the board or by opening an account; and
- 10 (e) designate the type of account to be opened if more than one type of account is offered.
- 11 (2) A person shall make contributions to an opened account in cash.
- 12 (3) An account owner may withdraw all or part of the balance from an account under rules prescribed
13 by the board. The rules must be used to help the board or program manager to determine if a withdrawal is a
14 nonqualified withdrawal or a qualified withdrawal to the extent that the board concludes that it is necessary for
15 the board or program manager to make that determination. The rules may require that:
- 16 (a) account owners seeking to make a qualified withdrawal or other withdrawal that is not a nonqualified
17 withdrawal shall provide certifications, copies of bills for qualified higher education expenses, or other supporting
18 material;
- 19 (b) qualified withdrawals from an account be made only by a check payable jointly to the designated
20 beneficiary and a higher education institution; and
- 21 (c) withdrawals not meeting certain requirements be treated as nonqualified withdrawals by the program
22 manager, and if these withdrawals are not nonqualified withdrawals, the account owner shall seek refunds of
23 penalties directly from the board.
- 24 (4) If the board determines that it is required to impose a penalty on nonqualified withdrawals for the
25 program to qualify as a qualified state tuition program or a qualified tuition program under section 529 of the
26 Internal Revenue Code, 26 U.S.C. 529, the board may impose a penalty in an amount equal to 10% of the portion
27 of the proposed withdrawal that would constitute income as determined in accordance with section 529 of the
28 Internal Revenue Code, 26 U.S.C. 529. The penalty must be withheld and paid to the board for use in operating
29 and marketing the program and for state student financial aid.
- 30 (5) The board, by rule, shall increase the percentage of the penalty prescribed in subsection (4) or

1 change the basis of this penalty if the board determines that the amount of the penalty must be increased to
2 constitute a minimum penalty for purposes of qualifying the program as a qualified state tuition program or a
3 qualified tuition program under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

4 (6) The board may decrease the percentage of the penalty prescribed in subsection (4) if:

5 (a) the penalty is greater than is required to constitute a minimum penalty for purposes of qualifying the
6 program as a qualified state tuition program or qualified tuition program under section 529 of the Internal Revenue
7 Code, 26 U.S.C. 529; or

8 (b) the penalty, when combined with other revenue generated under this chapter, is producing more
9 revenue than is required to cover the costs of operating and marketing the program and to recover any costs not
10 previously recovered.

11 (7) If an account owner makes a nonqualified withdrawal and a penalty imposed under subsection (4)
12 is not withheld pursuant to subsection (4) or the amount withheld was less than the amount required to be
13 withheld under that subsection for nonqualified withdrawals, the account owner shall pay:

14 (a) the unpaid portion of the penalty to the board at the same time that the account owner files a federal
15 and state income tax return for the taxable year of the withdrawal; or

16 (b) if the account owner does not file a return, the unpaid portion of the penalty on the due date for
17 federal and state income tax returns, including any authorized extensions.

18 (8) Each account must be maintained separately from each other account under the program.

19 (9) Separate records and accounting must be maintained for each account for each designated
20 beneficiary.

21 (10) A contributor to, account owner of, or designated beneficiary of an account may not direct the
22 investment of any contributions to any account or the earnings generated by the account in violation of section
23 529 of the Internal Revenue Code, 26 U.S.C. 529, and may not pledge the interest of an account or use an
24 interest in an account as security for a loan.

25 (11) If there is any distribution from an account to any person or for the benefit of any person during a
26 calendar year, the distribution must be reported to the internal revenue service and the account owner or the
27 designated beneficiary to the extent required by federal law.

28 (12) (a) The financial institution shall provide statements to each account owner whose participating trusts
29 are invested with the institution at least once each year within 31 days after the 12-month period to which they
30 relate. The statement must identify the contributions made during a preceding 12-month period, the total

1 contributions made through the end of the period, the value of the account as of the end of this period,
2 distributions made during this period, and any other matters that the board requires be reported to the account
3 owner.

4 (b) An in-state branch of an out-of-state financial institution shall provide statements to each owner of
5 an account in a qualified tuition program in another state whose contributions are invested with the institution at
6 least once each year within 31 days after the 12-month period to which they relate. The statement must identify
7 the contributions made during a preceding 12-month period, the total contributions made through the end of the
8 period, the value of the account as of the end of this period, distributions made during this period, and any other
9 matters that the board requires be reported to the owner of an account in another state.

10 (13) Statements and information returns relating to accounts, including accounts established by an
11 out-of-state financial institution, must be prepared and filed to the extent required by federal or state tax law or
12 by administrative rule.

13 (14) A state or local government or organizations described in section 501(c)(3) of the Internal Revenue
14 Code, 26 U.S.C. 501(c)(3), may, without designating a designated beneficiary, open and become the account
15 owner of an account to fund scholarships for persons whose identity will be determined after an account is
16 opened."

17

18 **Section 4.** Section 15-62-207, MCA, is amended to read:

19 **"15-62-207. Deductions for contributions.** An individual who contributes to one or more accounts in
20 a tax year under the family education savings program established under this chapter or to one or more accounts
21 of a qualified tuition program allowed under section 529 of the Internal Revenue Code, 26 U.S.C. 529, in any
22 other state is entitled to reduce the individual's adjusted gross income, in accordance with 15-30-111~~(8)~~(7), by
23 the total amount of the contributions, but not more than \$3,000. The contribution must be made to an account
24 owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child
25 or stepchild is a Montana resident."

26

27 **Section 5.** Section 15-62-208, MCA, is amended to read:

28 **"15-62-208. Tax on certain withdrawals of deductible contributions.** (1) There is a recapture tax at
29 a rate equal to the highest rate of tax provided in 15-30-103 on the recapturable withdrawal of amounts from the
30 family education savings program or from a qualified tuition program in another state that reduced adjusted gross

1 income under 15-30-111~~(8)~~(7).

2 (2) For purposes of determining the portion of a recapturable withdrawal that reduced adjusted gross
3 income, all withdrawals must be allocated between income and contributions in accordance with the principles
4 applicable under section 529(c)(3)(A) of the Internal Revenue Code of 1986, 26 U.S.C. 529(c)(3)(A). The portion
5 of a recapturable withdrawal that is allocated to contributions must be treated as derived first from contributions,
6 if any, that did not reduce adjusted gross income, to the extent of those contributions, and then to contributions
7 that reduced adjusted gross income. The portion of any other withdrawal that is allocated to contributions must
8 be treated as first derived from contributions that reduced adjusted gross income, to the extent of the
9 contributions, and then to contributions that did not reduce adjusted gross income.

10 (3) (a) The recapture tax imposed by this section is payable by the owner of the account from which the
11 withdrawal or contribution was made. The tax liability must be reported on the income tax return of the account
12 owner and is payable with the income tax payment for the year of the withdrawal or at the time that an income
13 tax payment would be due for the year of the withdrawal. The account owner is liable for the tax even if the
14 account owner is not a Montana resident at the time of the withdrawal.

15 (b) The department may require withholding on recapturable withdrawals from an account that was at
16 one time owned by a Montana resident if the account owner is not a Montana resident at the time of the
17 withdrawal. For the purposes of this subsection (3)(b), amounts rolled over from an account that was at one time
18 owned by a Montana resident must be treated as if the account is owned by a resident of Montana.

19 (4) For the purposes of this section, all contributions made to accounts by residents of Montana are
20 presumed to have reduced the contributor's adjusted gross income unless the contributor can demonstrate that
21 all or a portion of the contributions did not reduce adjusted gross income. Contributors who claim deductions for
22 contributions shall report on their Montana income tax returns the amount of deductible contributions made to
23 accounts for each designated beneficiary and the social security number of each designated beneficiary.

24 (5) As used in this section, "recapturable withdrawal" means a withdrawal or distribution that is a
25 nonqualified withdrawal or a withdrawal or distribution from an account that was opened after the later of:

26 (a) April 30, 2001; or

27 (b) the date that is 3 years prior to the date of the withdrawal or distribution.

28 (6) The department shall use all means available for the administration and enforcement of income tax
29 laws in the administration and enforcement of this section."

30

1 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

2

3 NEW SECTION. **Section 7. Retroactive applicability.** [This act] applies retroactively, within the
4 meaning of 1-2-109, to tax years beginning after December 31, 2006.

5

- END -